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January 15, 2013

Via E-Mail

Jeff S. Jordan, Esq.  
Office of the General Counsel  
Federal Election Commission  
999 E Street, N.W.  
Washington, DC 20463

Re: AR 12-11

Dear Mr. Jordan:

The undersigned serves as counsel to the Democratic Executive Committee of Florida and Alma Gonzalez, as Treasurer ("DECF"). I am writing in response to your letter of December 3, 2012 in connection with the above-referenced referral in connection with an Audit of the DECF for the 2008 election cycle. For the reasons set forth below, DECF respectfully requests that OGC recommend that no further action be taken in this matter or, in the alternative, that this matter be referred to the Alternative Dispute Resolution Division for further proceedings.

The Audit Referral appears to include four separate issues. I will respond to each issue below:

1) Excessive Coordinated Party Expenditures

The Final Audit Report determined that the DECF spent an amount in excess of the coordinated expenditure limits for Annette Taddeo, a candidate for Congress in 2008. The Audit report notes that the DECF spent \$82,400 in connection with coordinated expenditures. The combined coordinated expenditure limit for the 2008 election cycle was \$84,200. No other party committee made any coordinated expenditures on behalf of Ms. Taddeo. Therefore, the combined coordinated expenditure limit was not exceeded. See Final Audit Report at p. 6.

However, the DECF could only locate documentation that the DCCC transferred only \$17,900 in coordinated expenditure authority to the DECF. Thus, the Final Audit Report concluded that the DECF exceeded its coordinated expenditure authority by \$22,400. The DECF acknowledges that it cannot locate any paperwork to indicate that the DECF had received additional authority from the DCCC, and that the DCCC has provided a letter to the DECF that it did not intend to use the authority in this election.

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However, the failure to provide this paperwork to the DECF, while legally necessary, was a paperwork error only.

Thus, as stated in our response to the Draft Final Audit Report: "although there may have been a paperwork error with respect to the transfer of this unused authority, the authority held by the DCCC was in fact, unused. Therefore, as a practical matter, the combined 441a(d) [authority], in total, had not been exceeded and thus, no unfair advantage had been conferred upon the DECF or the Taddeo campaign."

2) Failure to Itemize Coordinated Expenditure Authority

The Final Audit Report concluded that the DECF failed to disclose \$194,957 in coordinated expenditures. The DECF acknowledges that these expenses, although disclosed on Schedule B, were not disclosed on the proper schedule, Schedule F. The DECF promptly amended its reports in response to the Interim Audit Report.

3) Failure to disclose adequate purposes

Although the Final Audit Report determined that certain expenses were inadequately disclosed, these errors were minor in nature. Unlike a finding that these expenses were not disclosed at all, the Audit Report chose to require and request information not specifically required by Commission regulations. Although some candidate specific communications may have inadvertently been disclosed as generic, these errors do not rise to any violation of Commission statutes or regulations. In addition, Commission regulations do not appear to actually require the disclosure of the names of candidates supported in connection with exempt activities disclosed on Schedule B. Otherwise, the general purpose of these expenditures complied with the minimal requirements of 11 C.F.R. § 104.3(b)(3)(i)(B). Of course, the DECF, without comment or protest, promptly amended its reports at the request of the Audit Division.

4) Receipt of Contribution that Exceeds the Limit

Included in the Audit referral document is the receipt of a contribution that exceeded the federal contribution limit of \$10,000. During 2008, the DECF received a contribution, in the facial amount of \$50,000 from Gerald Vento. Of this amount, \$20,000 of the contribution was deposited directly in the DECF's federal account and the remaining \$30,000 was deposited directly in the committee's non-federal account by use of separate deposit slips at the time of deposit. The question of the excessive contribution was discussed with the Audit Division. At the time of the deposit, it is believed that the DECF intended to attribute \$10,000 of the federal portion of the contribution to Mr. Vento's spouse. This reattribution apparently did not occur and the DECF refunded \$10,000 to Mr. Vento on April 22, 2009. The DECF acknowledges that this refund occurred more than 60 days from the receipt of the contribution. Of course the referral

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acknowledges that that the DECF had sufficient funds to refund the contribution at all times prior to the actual refund of the contribution.

During the field work, it appears that DECF staff handling the audit may have told the Audit Division that the contribution had intended to be split \$10,000 between the federal and \$10,000 to the non-federal account. It is believed that the staff who made this representation to the Audit Division was not aware that this was a facial check of \$50,000 at the time and may have relied solely upon electronic records to research the contribution. When the matter was discussed with the Audit Division the assumptions made by the DECF staffer that the contribution was to be split between federal and non-federal accounts was an entirely logical conclusion that could have been made in connection with any \$20,000 contribution. In hindsight, it appears that the intent to reattribute the remaining \$10,000 to a spouse was the likely intent of the DECF at the time of the deposit of the contribution.

Thus, the DECF raises two objections regarding the inclusion of this issue in the referral. First, the DECF objects to the referral of an issue that was not included as a finding in the Final Audit Report. Therefore, it is clear that the Commission had used its discretion to exclude it from the final audit report as the issue was not a material violation of the Act. Therefore, the same discretion must consistently be used for enforcement purposes as the violation did not exceed the Commission's established financial thresholds for inclusion in the Final Audit Report. The Commission cannot bait and switch issues that are not found to be material in the Audit context and then, after the fact, decide that it is subject to civil enforcement and penalty. Thus, matters raised in connection with an Audit referral must be limited only to those issues raised in the Findings of the Final Audit Report. This provides the regulated community and the audited committee with notice as to those issues that are subject to subsequent enforcement in connection with a particular audit.

Second, the DECF is baffled by the inclusion of language in the referral that it had "misrepresented" the transaction. The implication that the DECF may have intentionally misled the Audit Division is entirely unnecessary and offensive. The DECF was very cooperative and open with the Audit Division during the entire Audit process and had the staff realized the contribution was, on its face, a contribution of \$50,000, there would be no reason to withhold such information from the Audit Division.

Furthermore, the fact that the contribution was for \$50,000 on its face is factually and legally irrelevant. To be sure, the Commission has no regulations that discuss how a party committee is to handle a facially excessive contribution that was deposited, in part, into its non-federal account. As only \$20,000 of the contribution was deposited into its federal account, the contribution was, for all intents and purposes, a \$20,000 contribution for purposes of the Audit and PEC reporting. Since the other \$30,000 was never deposited in, or passed through a federal account of the DECF, it was and is irrelevant to discuss that portion of the contribution with the Audit Division or in the context of this

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referral. Thus, it appears that this language is only being included in the referral to make it appear that the DECF somehow committed some type of aggravated violation in order to overcome the lack of materiality of this error and the failure to include this issue in the Final Audit Report.

Based upon the above, the DECF respectfully requests that, if the Commission finds reason to believe a violation has occurred with respect to this referral that either no further action be taken, or that this matter be referred to the Commission's Alternative Dispute Resolution department as none of the activities conferred an unfair advantage to the DECF as well as the fact that the reporting errors were minimal and did not include any material errors in the disclosure of financial activity. In addition, the DECF fully cooperated with the Commission Audit and timely and adequately amended all reports as requested by the Commission.

If you have any further questions, please contact me at (202) 479-1111.

Respectfully submitted,



Neil P. Reiff  
Counsel for the Democratic  
Executive Committee of Florida

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